



The Legislative Commission to  
Review Administrative Rules

AUG 08 1994

## Board of Dentistry

EXECUTIVE OFFICE

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MN RELAY SERVICE FOR HEARING IMPAIRED (612) 297-5353 OR (800) 627-3529

*M. Hruby*

August 5, 1994

Maryanne V. Hruby  
Legislative Commission to Review Administrative Rules  
State Office Building, Room 55  
100 Constitution Avenue  
St Paul, Minnesota 55155

Dear Ms. Hruby:

Pursuant to Minnesota Statutes, section 14.23, I am enclosing copies of the following documents relating to proposed permanent rules relating to faculty and resident licenses:

1. A Notice of Intent to Adopt Rules Without a Public Hearing.
2. A Statement of Need and Reasonableness.
3. A copy of the proposed rule.

The Statement of Need and Reasonableness and the proposed rule are available to the general public as of today.

If you have any questions or concerns, please feel free to contact me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Richard W. Diercks".

Richard W. Diercks  
Executive Director

Encl.

**BOARD OF DENTISTRY**

**Proposed Permanent Rules Relating to Faculty and Resident Dentists  
Notice of Intent to Adopt Rules Without a Public Hearing**

NOTICE IS HEREBY GIVEN that the Minnesota Board of Dentistry (hereinafter "Board") intends to adopt the above entitled rules without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in *Minnesota Statutes* 14.22 to 14.28. The statutory authority to adopt the rules is *Minnesota Statutes* 150A.04, subd. 5; 150A.06, subds. 1, 1a, and 1b; 150A.08, subd. 1(6); and 150A.08, subd. 3, 214.06, subd. 1, and 214.06, subds. 1 and 2.

All persons have until September 9, 1994, in which to submit comment in support of or in opposition to the proposed rules. Comment is encouraged. Each comment should identify the portion of the proposed rules addressed, the reason for the comment, and any changes proposed.

Any person may make a written request for a public hearing on the rules within the comment period which will close on September 9, 1994. If 25 or more persons submit a written request for a public hearing within the comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. Any person requesting a public hearing should state his or her name and address and is encouraged to identify the portion of the proposed rules addressed, the reason for the request, and any change proposed. If a public hearing is required, the Board will proceed pursuant to *Minnesota Statutes* 14.131 to 14.20. Comments or written requests for a public hearing must be submitted to:

Richard W. Diercks, Executive Director  
Minnesota Board of Dentistry (612)642-0579  
2700 University Avenue West, Suite 70  
St. Paul, Minnesota 55114

Minnesota Relay Service for Hearing and Speech Impaired:

Metro Area: (612) 297-5353

Outside Metro Area: (800) 627-3529

The proposed rules may be modified if the modifications are supported by data and views submitted to the Board and do not result in a substantial change in the proposed rules as noticed.

The rules proposed for adoption establish requirements for licensure as a faculty dentist, establish requirements for licensure as a resident dentist, provide for terms and renewal of licensure as a faculty or resident dentist, and establish application and annual fees for faculty and resident dentists. A free copy of the rules is available upon request from Karen L. Ramsey at the Board office.

A Statement of Need and Reasonableness has been prepared and is available from Karen L. Ramsey upon request. The statement describes the need for and reasonableness of the proposed rules, identifies the data and information relied upon to support the proposed rules, and addresses the Board's position regarding the applicability of the small business rulemaking provisions and the impact of the proposed amendments on small business.

*Minnesota Statutes* 14.115 specifies certain actions which an agency must take if any agency engages in rulemaking which may

affect small businesses. It is the Board's position that the Board's rules are not subject to section 14.115.

Upon adoption of the rules by the Board, the rules and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General or who wish to receive a copy of the adopted rules must submit a written request to Karen L. Ramsey at the board office.



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Richard W. Diercks  
Executive Director

July 25, 1994

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**BOARD OF DENTISTRY**

**PROPOSED PERMANENT RULES RELATING TO  
FACULTY AND RESIDENT DENTISTS**

**STATEMENT OF NEED AND REASONABLENESS**

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**BACKGROUND INFORMATION**

**Purpose of Amendments**

The proposed rules establish requirements for licensure as a faculty dentist, establish requirements for licensure as a resident dentist, provide for terms and renewal of licensure as a faculty or resident dentist, and establish application and annual fees for faculty and resident dentists.

**Statutory Authority**

Minnesota Statutes, section 150A.04, subdivision 5 provides that "the board may promulgate rules as are necessary to carry out and make effective the provisions and purposes of sections 150A.01 to 150A.12, in accordance with sections 14.02, 14.04 to 14.36, 14.38, 14.44 to 14.45, and 14.57 to 14.62."

Minnesota Statutes, section 150A.06, subdivision 1 provides that an applicant to practice as a dentist "may be examined by the board or by an agency pursuant to section 150A.03, subdivision 1, in a manner to test the applicant's fitness to practice dentistry."

Minnesota Statutes, section 150A.06, subdivision 1a provides that "this subdivision [faculty dentists] takes effect on September 1 following the date that the rules adopted under this subdivision become effective."

Minnesota Statutes, section 150A.06, subdivision 1b states, "A resident dentist license must be renewed annually pursuant to the board's rules. ... The requirements of sections 150A.01 to 150A.21 apply to resident dentists except as specified in rules adopted by the board."

Minnesota Statutes, section 150A.08, subdivision 1, clause (6) establishes as one of the grounds for the board to suspend, revoke, limit, modify, or deny any license to practice dentistry or dental hygiene or the registration of any dental assistant "conduct unbecoming a person licensed to practice dentistry or dental hygiene or registered as a dental assistant, or conduct contrary to the best interest of the public, as such conduct is defined by the rules of the board."

Minnesota Statutes, section 150A.08, subdivision 3 provides that "any licensee or registrant whose license or registration has

been suspended or revoked may have the license or registration reinstated or a new license or registration issued, as the case may be, when the board deems the action is warranted."

Minnesota Statutes, section 214.06, subdivision 1 provides that "all health-related licensing boards and all non-health-related licensing boards shall by rule, with the approval of the commissioner of finance, adjust any fee which the commissioner of health or the board is empowered to assess a sufficient amount so that the total fees collected by each board will as closely as possible equal anticipated expenditures during the fiscal biennium, as provided in section 16A.128."

Minnesota Statutes, section 214.06, subdivision 2 provides that "each health-related and non-health-related licensing board shall promulgate rules providing for the renewal of licenses. The rules shall specify the period of time for which a license is valid, procedures and information for renewal, and renewal fees to be set pursuant to subdivision 1."

#### **Rule Development Process**

The board began the process of developing the proposed rules by publishing in the April 5, 1993 edition of the *State Register* a notice that the board is seeking information or opinions from sources outside the board in preparing to propose noncontroversial amendments.

The board developed the proposed amendments on the basis of needs identified by the board. After having compiled a list of suggested changes, the board surveyed the Minnesota Dental Association, the Minnesota Dental Hygienists' Association, and other dental groups and organizations and asked them to indicate, with respect to each proposed change, whether in their opinion the change was needed and whether it would be controversial. The board's Rules Committee subsequently held a public meeting on July 16, 1993 to review the proposed changes and the survey responses. Based on the input provided by the various groups, the survey results, and the comments received at the meeting, the committee placed the proposed changes into several categories. The amendments now being proposed were classified as category 2 changes, deemed to be needed and noncontroversial but not as high a priority as category 1 changes.

The Rules Committee subsequently held public meetings to consider drafts of the category 2 rules changes, and approved a proposed draft on faculty and resident dentists to be submitted to the full board. The draft was approved at a public meeting of the Board of Dentistry held on June 11, 1994.

Pursuant to Minnesota Statutes, section 14.23, the board has

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prepared this Statement of Need and Reasonableness and made it available to the public as of August 5, 1994.

The board will publish in the *State Register* the proposed rules and the Notice of Intent to Adopt Rules Without a Public Hearing. The board will also mail copies of the Notice to persons registered with the board pursuant to Minnesota Statutes, section 14.22 as well as to others who the board believes will have an interest in the rules. The Notice will comply with the requirements of Minnesota Statutes, section 14.22 and Minnesota Rules, part 2010.0300, item E.

These rules will become effective five working days after publication of a Notice of Adoption in the *State Register* pursuant to Minnesota Statutes, section 14.27.

#### **DISCUSSION OF SPECIFIC PROVISIONS**

##### **Part 3100.0100 Definitions.**

**Subp. 11a. Faculty dentist.** The proposal cites the statutory definition of faculty dentist.

**Subp. 18a. Resident dentist.** The proposal cites the statutory definition of resident dentist.

##### **3100.1150 License to Practice Dentistry as a Faculty Dentist.**

###### **Subpart 1. Licensure.**

**A.** The proposed rules specify that in order to practice dentistry, a faculty member must be licensed by the board. This provision is for purposes of clarification, as the statute specifies that a faculty dentist must be licensed by the board.

**B.** The proposal lists the criteria under which the board must license a person to practice dentistry as a faculty dentist.

**(1)** The person must submit an application to the board. This parallels the requirement that any person licensed or registered by the board must follow.

**(2)** The person must not otherwise be licensed to practice dentistry in Minnesota. This follows from the requirement of Minnesota Statutes, section 150A.06, subdivision 1, which states that faculty licensure is a special category of licensure "entitling the holder to practice dentistry within the school [of dentistry] and its affiliated teaching facilities, but only for the purpose of instructing or conducting research."

**(3)** The dean of a school of dentistry must certify

to the board that the person is a member of the school's faculty and practices dentistry. This follows from the requirement of Minnesota Statutes, section 150A.06, subdivision 1, which states that "the dean of the school of dentistry shall certify to the board those members of the school's faculty who practice dentistry but are not licensed to practice dentistry in Minnesota."

(4) The person must not have engaged in behavior for which licensure may be suspended, revoked, limited, modified, or denied. This requirement is intended to exclude from faculty licensure persons who have engaged in behavior which would make them subject to having their licenses taken away.

C. The rules specify that the board must accept an applicant as a faculty dentist if the dean of a school of dentistry provides to the board the information specified.

(1) The applicant's name is necessary for purposes of identification.

(2) The applicant's social security number is necessary for purposes of identification.

(3) The applicant's home and work address are necessary for purposes of identification and communication.

(4) The dean is to provide a statement that the applicant is a member of the faculty and practices dentistry only for purposes of instruction or research. This provision follows from the requirement of Minnesota Statutes, section 150A.06, subdivision 1, which states that faculty licensure is a special category of licensure "entitling the holder to practice dentistry within the school [of dentistry] and its affiliated teaching facilities, but only for the purpose of instructing or conducting research."

(5) The dean is to state the dates of the applicant's employment by the school of dentistry. This information is necessary in order for the board to determine the dates for which an applicant is eligible for licensure as a faculty dentist.

(6) The dean is to provide a statement that the applicant has been notified of the need to be licensed by the board as a faculty dentist. This is to ensure that applicants are properly notified that they must be licensed as a faculty dentist in order to practice as one.

(7) The dean is to provide a statement that the information provided is accurate and complete. This is to ensure that the information is reliable.



**Subp. 2. Termination of licensure.**

A. The proposed rules specify that a person's license to practice dentistry as a faculty dentist is terminated when the person is no longer a member of the faculty of a school of dentistry or when the person discontinues practicing dentistry. This requirement follows from the requirement of Minnesota Statutes, section 150A.06, subdivision 1, which states that faculty licensure is a special category of licensure "entitling the holder to practice dentistry within the school [of dentistry] and its affiliated teaching facilities, but only for the purpose of instructing or conducting research."

B. The proposed rules specify that a person licensed to practice dentistry as a faculty dentist must inform the board when the licensee is no longer a member of the faculty of a school of dentistry or when the person discontinues practicing dentistry." This is so that the board has timely and accurate information on when a person will no longer be eligible for licensure as a faculty dentist.

C. The proposal states that a person who fails to inform the board as required in item B is deemed to have committed fraud or deception. This is so that the requirement will be enforceable by the board.

**3100.1160 License of Practice Dentistry as a Resident Dentist.**

**Subp. 1. Licensure.**

A. The proposed rules provide that in order to practice dentistry an enrolled graduate student or a student of an advanced education program must be licensed by the board. This requirement follows from the definition of resident dentist in Minnesota Statutes, section 150A.01, subdivision 8a: "'Resident dentist' means a person who is licensed to practice dentistry as an enrolled graduate student or student of an advanced education program accredited by the American Dental Association Commission on Accreditation."

B. The proposal lists the criteria under which the board must license a person to practice dentistry as a resident dentist.

(1) The person must submit an application to the board. This parallels the requirement that any person licensed or registered by the board must follow.

(2) The person must not otherwise be licensed to practice dentistry in Minnesota. This follows from the requirement of Minnesota Statutes, section 150A.06, subdivision 1b, which

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states that resident dentist licensure is a special category of licensure which applies to "a person who is a graduate of a dental school and is an enrolled graduate student or student of an accredited advanced dental education program and who is not licensed to practice dentistry in the state."

(3) The person must provide evidence of having graduated from a dental school. This follows from the requirement of Minnesota Statutes, section 150A.06, subdivision 1b, which states that resident dentist licensure applies to a person "who is a graduate of a dental school."

(4) The person must provide evidence of being an enrolled graduate student or a student of an accredited advanced dental education program. This follows from the requirement of Minnesota Statutes, section 150A.06, subdivision 1b, which states that resident dentist licensure applies to a person who is "an enrolled graduate student or student of an accredited advanced dental education program."

(5) The person must not have engaged in behavior for which licensure may be suspended, revoked, limited, modified, or denied. This requirement is intended to exclude from resident dentist licensure persons who have engaged in behavior which would make them subject to having their licenses taken away.

**Subp. 2. Termination of licensure.**

A. The proposed rules specify that a person's license to practice dentistry as a resident dentist is terminated when the person is no longer an enrolled graduate student or a student of an accredited advanced dental education program. This requirement follows from the requirement of Minnesota Statutes, section 150A.06, subdivision 1b, which states that resident dentist licensure is a special category of licensure which applies to "a person who is a graduate of a dental school and is an enrolled graduate student or student of an accredited advanced dental education program and who is not licensed to practice dentistry in the state."

B. The proposed rules specify that a person licensed to practice dentistry as a faculty dentist must inform the board when the licensee is no longer an enrolled graduate student or a student of an accredited advanced dental education program. This is so that the board has timely and accurate information on when a person will no longer be eligible for licensure as a resident dentist.

C. The proposal states that a person who fails to inform the board as required in item B is deemed to have committed fraud or deception. This is so that the requirement will be enforceable by the board.

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**3100.1700 Terms and Renewal of Licensure and Registration; General.**

No substantive changes are made in the revisions to this part. The amendments are intended to clarify that the existing requirements for terms and renewal of licensure and registration continue to apply as they have in the past, but do not apply to faculty and resident licensure.

**3100.1750 Terms and Renewal of Licensure; Faculty and Resident Dentists.**

**Subpart 1. Requirements.** The proposed language makes clear that the requirements of this part apply to the terms and renewal of licensure as a faculty or resident dentist.

**Subp. 2. Terms.** The proposal states that an initial license issued by the board is valid until it is renewed or terminated. An annually renewed license is valid from July 1 of the year for which it is issued. The July 1 deadline follows from the requirements of Minnesota Statutes 150A.06, subdivision 1a, which states that a license for a faculty dentist expires on July 1.

**Subp. 3. Renewal applications.**

**A.** Under the proposed language, a faculty or resident dentist must complete and submit to the board an application form furnished by the board, together with the applicable annual renewal and late fees, no later than June of the year preceding the year for which licensure renewal is accepted. The June 30 deadline follows from the July 1 deadline specified in subpart 2.

**B.** The proposed rules require the applicant to submit on the application form the following: the applicant's signature; the applicant's office addresses; the applicant's license number; and any additional information requested by the board. The information specified is necessary for purposes of identification and communication.

**3100.2000 Fees.**

The proposed rules would establish the faculty dentist application and annual fees at the same level as for dentists and the resident dentist application and annual fees at the same level as for dental hygienists. Faculty dentist fees would be the same as for dentists because faculty dentists perform comparable duties. Resident dentist fees would be lower in recognition of the fact that resident dentists are graduate students.

**Effective Date**

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The rules would become effective August 31, 1995, the earliest the rules could take effect in accordance with statutory requirements.

**ADDITIONAL INFORMATION**

**Expenditure of Public Money by Local Public Bodies**

Minnesota Statutes, section 14.11, subdivision 1 requires that "if the adoption of a rule by an agency will require the expenditure of public money by local public bodies, the appropriate notice of the agency's intent to adopt a rule shall be accompanied by a written statement giving the agency's reasonable estimate of the total cost to all local public bodies." The board does not anticipate that the proposed amendments will require the expenditure of public money by local public bodies.

**Impact on Agricultural Land**

Minnesota Statutes, section 14.11, subdivision 2 requires that "if the agency proposing the adoption of the rule determines that the rule may have a direct and substantial adverse impact on agricultural land in the state, the agency shall comply with the requirements of sections 17.80 to 17.84." The board does not anticipate that the proposed amendments will have a direct and substantial adverse impact on agricultural land in the state.

**Small Business Considerations**

Minnesota Statutes, section 14.115, subdivision 2 requires that when an agency proposes new or amended rules, it must consider "methods for reducing the impact of the rule on small business" and "document how it has considered these methods"; subdivision 4 requires the agency to "provide an opportunity for small businesses to participate in the rulemaking process."

The board's position is that the requirements of section 14.115 do not apply to the proposed rules, because subdivision 7, clause (2) provides that the section does not apply to "agency rules that do not affect small business directly." The board's authority relates only to the qualifications of dentists, dental hygienists, and registered dental assistants to provide dental services; the board has not authority over the dental businesses in which they practice. Therefore the rules do not affect dental businesses as such, and the board is exempt from the requirements of section 14.115.

**Fees**

Minnesota Statutes, section 16A.128, subdivision 1a requires that "fees for accounts for which appropriations are made may not

be established or adjusted without the approval of the commissioner [of finance]." Approval is being requested from the commissioner.

**Expert Witnesses**

Minnesota Rules, part 1400.0500, subpart 1 requires that if rules are adopted with a public hearing, the statement of need and reasonableness must include "a list of any witnesses to be called by the agency to testify on its behalf." The board does not anticipate that it will be necessary to have a public hearing on the proposed amendments.



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Richard W. Diercks  
Executive Director

July 25, 1994